

REMARKS

The present Amendment is in response to the Office Action mailed January 5, 2007, in the above-identified application.

In the present Amendment, Applicants have amended claim 1 to add the limitation --clamshell-style-- before "trial head." Support for this amendment is fully supported by the originally filed specification and adds no new matter (e.g. see originally filed claim 12).

In the Office Action, the Examiner objected to claims 5, 8 and 9 as having the informalities identified on page 2 thereof. Specifically, the Examiner's objection relates to whether the engagement portion of the head separator is "inwardly tapered toward the distal end of the longitudinal shaft" or "outwardly tapered toward the distal end of the longitudinal shaft." After reviewing the specification and drawings of the application, Applicants conclude that the engagement portion of the head separator is inwardly tapered toward the distal end of the longitudinal shaft. Thus, claim 5 has been amended to correct this inconsistency. Claims 8 and 9 in their present form correctly recited that the distal end of the engagement portion of the head separator is "laterally inwardly tapered toward the distal end of the longitudinal shaft." In view of the above-noted amendment to claim 5, Applicants respectfully assert that claims 5, 8 and 9 now satisfy the requirement of the MPEP and are otherwise allowable.

In the Office Action, the Examiner rejected claims 1-15 on the grounds on non-statutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,669,699. Applicants note that the present application is a continuing application of the '699 patent. In response, Applicants enclose herewith a Terminal Disclaimer to overcome the '699 patent.

In the Office Action, the Examiner also rejected claims 1-3 and 5-10 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,908,433 to Freedland. Referring to FIG. 1 thereof, Freedland discloses a winged orthopedic compression bolt including a pair of wings 30, 40 pivotally connected to an end of an internal shaft 20. An external hollow sleeve 12 slides along the internal shaft 20 to move the wings 30, 40 in to the position shown in FIG. 6 of Freedland. The device is fastened to bone as shown in FIG. 8 of Freedland.

In response to the Examiner's rejection under Freedland and as indicated above, Applicants respectfully assert that claim 1 is unanticipated by Freedland because the reference neither discloses nor suggests an intervertebral distraction tool including "a clamshell-style trial head at the distal end of the longitudinal shaft." For these reasons, claim 1 is unanticipated by Freedland and is otherwise allowable. Claims 2-11 are allowable, *inter alia*, by virtue of their dependence from claim 1.

Applicants note that the Examiner only rejected claim 12 under a double patenting rejection. In view the filing of a Terminal Disclaimer regarding the '699 patent, Applicants respectfully assert that claim 12 is patentable over the prior art. Claims 13-15 are patentable, *inter alia*, by virtue of their dependence from claim 12.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

Application No.: 10/725,306

Docket No.: SPINE 3.0-451 CONT

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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